

**Pat Wood, III**  
Chairman

**Judy Walsh**  
Commissioner

**Brett A. Perlman**  
Commissioner

**W. Lane Lanford**  
Executive Director



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## *Public Utility Commission of Texas*

June 20, 2000

Magalie Roman Salas  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room TW-B204  
Washington, D.C. 20554

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JUN 21 2000  
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RE: CC Docket No. 96-45/DA 00-1068  
In the Matter of Common Carrier Bureau Seeks Comment on Requests for  
Confidential Treatment of Wire Center Line Count Data

To the Secretary:

Enclosed herewith for filing with the Commission are an original plus four copies of the Comments of the Public Utility Commission of Texas in the above captioned matter. We are also providing copies to ITS and the Common Carrier Bureau. We are also providing an electronic copy of these comments via your ECFS interface.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stephen J. Davis".  
for Stephen J. Davis  
Chief, Office of Policy Development

cc: ITS, Inc.  
Sheryl Todd, Common Carrier Bureau

No. of Copies rec'd CHS  
List A B C D E

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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JUN 21 2000  
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In the Matter of §  
Common Carrier Bureau Seeks §  
Comment on Requests for §  
Confidential Treatment of Wire §  
Center Line Count Data §

CC Docket No. 96-45  
DA 00-1068

**COMMENTS OF  
THE PUBLIC UTILITY COMMISSION OF TEXAS**

The Common Carrier Bureau (CCB) seeks comment on whether the line count data for wire centers that do not receive support from the Federal Communication Commission's (FCC's) high-cost universal service support mechanism for non-rural carriers should be afforded confidential treatment as trade secrets or commercial or financial information under the federal Freedom of Information Act. The CCB also seeks comment on whether line count data at the wire center level are publicly available from other sources such as state commissions and whether there is a compelling public interest in disclosing the wire center line count data even if such data were to be considered confidential.<sup>1</sup> The Public Utility Commission of Texas (PUCT) provides comment on these issues below.

The PUCT receives general reports from the telecommunications carriers that contain line count data at the wire center level. These reports are subject to the Texas Public Information Act (TPIA), Tex. Gov't Code § 552.001 *et seq.*, which provides

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<sup>1</sup> Public Notice In the Matter of the Common Carrier Bureau Seeks Comment on Requests for Confidential Treatment of Wire Center Line Count Data, Pleading Cycle Established, CC Docket No. 96-45.

that “public information,” a category that includes information filed by private parties with state agencies, shall be produced for inspection, duplication, or both on application by any person unless that information is excepted from the disclosure requirement by one of the Act’s specifically enumerated exceptions. These exceptions include trade secrets or commercial or financial information which, if disclosed, would cause substantial competitive harm to the person from whom the information was obtained. Historically, these reports have not been made available to the public.

On November 15, 1999, Supra Telecom (Supra), made a request to the PUCT under the TPIA for Southwestern Bell Telephone Company’s (SWBT’s) 1998 Access Line Report (Report). Supra is a competitor of SWBT. The PUCT referred the request to the Texas Attorney General, who is authorized by Texas law to determine whether requested information is excepted from disclosure under the TPIA. On February 2, 2000 the Texas Attorney General ruled that SWBT failed to show, based on specific factual evidence, that disclosure of its Report would cause substantial competitive harm and ordered the Report released to Supra.<sup>2</sup> Thus, under current Texas law, the SWBT 1998 Access Line Report is not afforded confidential treatment and is publicly available through the PUCT.

SWBT filed suit challenging the Texas Attorney General’s ruling that the release of SWBT’s Report would not cause SWBT competitive harm. *Southwestern Bell Telephone Co. and the Public Utility Commission of Texas v. John Cornyn, Attorney General of Texas*, Cause No. GNO-00343 (consolidated), in the 200th District Court of Travis County Texas. The PUCT also filed suit challenging the ruling that the SWBT’s Report must be released. *Id.* Supra intervened in support of the ruling. The parties recently completed preliminary discovery disclosures, but have not yet established a briefing and trial schedule.

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<sup>2</sup> BR 2000-334 p. 2.

The main issue in the suit concerns whether the Report is excepted from disclosure by TPIA § 552.110, which excepts trade secrets or commercial or financial information, which if disclosed, would cause substantial competitive harm to the person from whom the information was obtained. SWBT argues that the information should be excepted because (1) it filed the Report in reliance on PUCT procedures for confidential filing and requested that it not be given to SWBT's competitors; (2) the Report contains confidential trade secrets; and (3) the Report contains confidential commercial information regarding the number of access lines for each of the identified locations in which SWBT provides services, and that disclosure of the number of access lines at each location would assist SWBT's competitors and harm SWBT by allowing the competitors to select markets or avoid markets based on SWBT's proprietary customer data information. SWBT also argues that the ruling is erroneous because it fails to recognize the PUCT's interest in obtaining information from market participants in Texas. SWBT asserts that it and other entities will not be willing to submit such data to the PUCT in the future if they cannot be assured that the information will not be released to competitors. SWBT further asserts that disclosure of the information is a taking for which the State would be liable under the federal and Texas Constitutions.

The PUCT believes that the Attorney General's ruling that SWBT's 1998 Access Line Report is subject to public disclosure is in error because it failed to consider the changing nature of the telecommunications market and the PUCT's varied roles in overseeing and regulating these changes. In particular, the PUCT asserts that whether the information at issue in this case should be subject to release should include consideration of the PUCT's charge to oversee the implementation of competition into the telecommunications market. This responsibility requires the PUCT to prepare reports for the Texas Legislature, promulgate rules, monitor developments in the industry, and issue orders--all activities that require the consideration of sensitive competitive information. As a result of the ruling, many telecommunications providers and other utilities have expressed reluctance to provide such information to the PUCT. The ruling will make it difficult for the PUCT to

obtain information needed to fulfill its statutory mandate. In addition, the PUCT is placed in an awkward position because the ruling calls into question the public availability of all access line information that the PUCT has heretofore collected with the understanding that the information would be maintained as privileged.

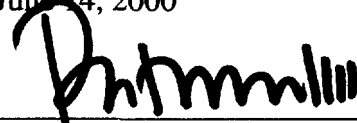
The PUCT is similarly concerned about the impact that a ruling in this proceeding may have on its ability to meet its statutory obligations. Specifically, if line count data by wire center are no longer afforded confidential treatment under federal law, will such a designation negatively affect state regulatory agencies' ability to use such information in the execution of their duties? Therefore, in determining whether a compelling public interest in disclosing the wire center line count data exists, the PUCT urges the CCB to consider the impact that any CCB ruling may have on state commissions' ability to gather and protect sensitive information needed to fulfill their statutory mandates.

We appreciate the opportunity to provide the CCB with our experience and recommendations in this matter.

Respectfully submitted,

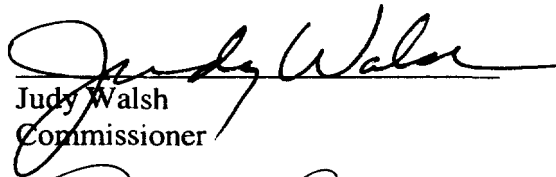
Public Utility Commission of Texas  
1701 N. Congress Avenue  
Austin, Texas 78711-3326

June 14, 2000



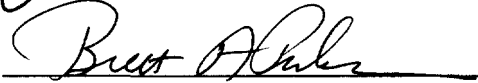
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